

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RUFUS PAUL HARRIS,	:	MOTION TO VACATE
Movant,	:	28 U.S.C. § 2255
	:	
v.	:	CRIMINAL INDICTMENT NO.
	:	1:09-CR-0406-TCB-JFK-1
UNITED STATES OF AMERICA,	:	
Respondent.	:	CIVIL FILE NO.
	:	1:15-CV-0467-TCB-JFK

**UNITED STATES MAGISTRATE JUDGE'S
FINAL REPORT AND RECOMMENDATION**

The matter is before the Court on referral [399] of the Eleventh Circuit Court of Appeals' limited remand [398] to determine the date on which Movant submitted his *pro se* notice of appeal [385] to prison officials for mailing. The undersigned finds that Movant submitted his notice of appeal to prison officials for mailing on April 11, 2016.

I. Discussion

The record shows the following. Movant did not date his notice of appeal, and the attached copy of the envelope shows that it was mailed on April 12, 2016. (Notice of Appeal, ECF No. 385; Attach. ECF No. 385-2). The back of the envelope is stamped "Sealed in the Presence of Staff" and initialed with a J. L. to the right and left of the stamp. (Attach.). The back of the envelope also is stamped April 12, 2015.

(Id.). In his filing in the Eleventh Circuit, Petitioner states that Counselor J. Lyon was off on April 8, 2016; that his mail was sealed and stamped on April 11, 2016, although Lyon did not date his security stamp; and that Lyon can verify his statements. Am. Resp. of June 30, 2016, Harris v. United States, Appeal No. 16-11801 (11th Cir. filed Apr. 18, 2016).

The undersigned directed the parties to submit affidavits or copies of relevant prison records and procedures to aid in clarifying the date on which Petitioner delivered his notice of appeal to prison authorities for mailing. (Order of Sept. 20, 2016, ECF No. 400). The government has responded with, *inter alia*, an affidavit from Jeremy Lyon. (Gov't Ex. A, ECF No. 401-1). Lyon avers that Movant provided him with outgoing legal mail on April 11, 2016; that he, Lyon, stamped the envelope "Sealed in the Presence of Staff" and initialed the envelope to the right and left of the stamp; that the mail was taken to the mail room and transported to the United States Post Office on April 12, 2016; and that he does not know who placed the April 12, 2016, stamp on the back of the envelope. (Id. ¶¶ 5-8). Lyon also states (1) that Movant told him the letter had been ready for delivery on April 8, 2016, when Lyon was off, and (2) that on April 8, 2016, Movant could have requested any member of the unit staff to handle outgoing mail. (Id. ¶ 5).

Based on the above, the undersigned finds that Movant submitted his notice of appeal for mailing on April 11, 2016, the date on which Lyon and Movant agree.


II. Conclusion

Accordingly,

IT IS RECOMMENDED that the Court find that Movant submitted his notice of appeal for mailing on April 11, 2016.

The Clerk of Court is **DIRECTED** to withdraw the referral of this matter to the Magistrate Judge.

IT IS SO RECOMMENDED and DIRECTED, this 21st day of October, 2016.



JANET F. KING
UNITED STATES MAGISTRATE JUDGE